

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION**

FIREARMS REGULATORY  
ACCOUNTABILITY COALITION, INC., *et*  
*al.*,

Plaintiffs,

v.

MERRICK B. GARLAND, *et al.*,

Defendants.

Civil Action No. 1:23-cv-00003-DLH-CRH

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR LEAVE TO  
FILE A FIRST AMENDED COMPLAINT**

Pursuant to Local Civil Rule 7.1(B), Plaintiffs respectfully submit this memorandum in support of their motion for leave to file a first amended complaint.<sup>1</sup>

**I. BACKGROUND**

Plaintiffs commenced this action on January 4, 2023, challenging the Bureau of Alcohol, Tobacco, Firearms, and Explosives' ("ATF") (1) classification of a gun called the "FAI-15 Antithesis," and (2) failure to create a statutorily-required process for the sale, delivery, and transportation of weapons classified as short-barreled shotguns under the Gun Control Act ("GCA") but not the National Firearms Act ("NFA"), including—at the time—a gun called the "Reformation." ECF No. 1. On May 4, 2023, ATF issued a new classification letter affirming that the Reformation is a "short-barreled shotgun" under the GCA and ruling for the first time that the Reformation is a "firearm" under the NFA. ECF No. 16-1.

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<sup>1</sup> Plaintiffs conferred with Defendants, who represented that they "don't intend to oppose Plaintiffs' motion for leave to amend," but that they would "await Plaintiffs' filing to convey [their] formal position."

Plaintiffs seek to amend their Complaint primarily to add a new count and factual allegations challenging ATF's classification of the Reformation. Plaintiffs' proposed amended complaint likewise adds as exhibits ATF's new classification decision and amended declarations addressing the import of that decision. In addition, Plaintiffs' proposed amended complaint includes conforming edits to reflect the changed factual circumstances between the filing of the original complaint and the filing of the amended complaint. Finally, Plaintiffs' proposed amended complaint alleges additional facts about Plaintiff Firearms Regulatory Accountability Coalition that are consistent with prior filings before this Court, *see* ECF No. 11–2, and the proposed declaration of Travis White affixed to the amended complaint. Plaintiffs' proposed amended complaint and proposed exhibits to the amended complaint are attached to the Motion. Plaintiffs have not previously amended their Complaint.

## **II. REASONS FOR GRANTING THE MOTION**

Under Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading” with “the court’s leave.” Fed. R. Civ. P. 15(a)(2). “The court should freely give leave when justice so requires.” *Id.* “Unless there is a good reason for denial, such as undue delay, bad faith, or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the non-moving party, or futility of the amendment, leave to amend should be granted.” *Weslease 2018 Operating LP v. 640water, LLC*, No. 1:19-CV-00153, 2021 WL 6805680, at \*2 (D.N.D. Sept. 7, 2021) (Hovland, J.) (citations and quotations omitted); *accord Foman v. Davis*, 371 U.S. 178, 182 (1962). “The likelihood of success on the new claim or defense is not a consideration for denying leave to amend unless the claim is clearly frivolous.” *Weslease*, 2021 WL 6805680, at \*2 (citation omitted).

Here, “justice requires that [Plaintiffs] be allowed to amend the complaint because there is no showing of bad faith, dilatory motives, or prejudice to the defendants.” *Id.* Plaintiffs’

amendment is in response to ATF's reclassification of the Reformation, which occurred roughly two weeks ago. And indeed, Defendants readily anticipated that "Plaintiffs may be inclined to amend their Complaint to," *inter alia*, "challeng[e] ATF's recent decision." ECF No. 16 at 12 n.4. Plaintiffs' straightforward Administrative Procedure Act arguments challenging ATF's new classification decision are also not "clearly frivolous," and thus leave to amend should be granted. *Weslease*, 2021 WL 6805680, at \*2 (citation omitted).

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the motion for leave to file the amended complaint and its exhibits.

May 19, 2023

Respectfully submitted,

/s/ Stephen J. Obermeier

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